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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,430	07/09/2003	Michael Tod Morman	13,857.1	9183
22827	7590	01/30/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			YAO, SAMCHUAN CUA	
			ART UNIT	PAPER NUMBER

1733

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,430

Applicant(s)

MORMAN ET AL.

Examiner

Sam Chuan C. Yao

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24,26-31,35 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24,26-31,35 and 37-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 24, 26-31, 35, 37-42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As far as the Examiner can tell, no express support can be found for the newly added limitation "*partially stretching ... to render a partial degree of breathability to said non-elastic film layer*" (emphasis added) per claim 24, without any guidelines/guidance from Counsel/Applicant as to where support might be found, this engenders a New Matter situation. Moreover, it would also appear that no sufficient support in the original disclosure to partially stretch a film "*to a film stretching draw of less than 4.0x to render said non-elastic film layer partially breathable*" (emphasis added). While the original disclosure discloses partially stretching a film by about 3.6X (Table 1) and also teaches stretching a film by "*over about 4X*" (numbered paragraph 69) in order to make the film "*highly breathable*", there is no sufficient support in the original disclosure to broadly

Art Unit: 1733

require partially stretching a film by less than 4.0 X to render the film "*partially breathable*".

It is worth noting that the WVTR of a laminate in sample C2 is higher than anyone in samples 3-8 (example 1). For sample C2, no additional stretching is performed on a laminate, after a film has been stretched by about 3.6X. The WVTR of a finished laminate for this sample is around 1759 g/m<sup>2</sup>/24 hr. For samples 3-8, each laminate is further stretched, after each film has been stretched by about 3.6X. For these samples, the respective WVTR of each laminate for the samples is less than 1759 g/m<sup>2</sup>/24 hr. These results appear to be contrary to the presently recited claims.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 24, 26-31, 35, 37-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24 and 35 are indefinite, because it is unclear what is intended by the phrases "*a partial degree of breathability*" and "*partially breathable*", respectively. Does this limitation intended to require that the "*final degree of breathability*" of a film is greater than the "*partial degree of breathability*" of the film or a "*partially breathable*" film. If so, this appears to be contrary to the results shown in table 1 as noted in numbered paragraph 2.

Art Unit: 1733

It is also worth noting that in paragraph number 36, it is disclosed that "... to qualify as being *"breathable"* for the present invention, the resultant laminate should have a water vapor transmission rate (WVTR) of at least about 250" (quotation in original)  $\text{g/m}^2/24 \text{ hr}$ . In light of this passage, is Applicant suggesting that in order for a stretched film to be breathable, it must have a WVTR of at least about 250  $\text{g/m}^2/24 \text{ hr}$ ? If so, since these claims require the film to either have "a *partial degree of breathability*" or is *"partially breathable"*, is Applicant suggesting that a partially stretched film have a WVTR of less than about 250  $\text{g/m}^2/24 \text{ hr}$ ?

### **Conclusion**

Note: no prior art rejection is made, since there is no suggestion in the art to partially stretch a film to render the film partially breathable and then to further stretch a laminate comprising the partially stretch film to neck the laminate and render a final degree of breathability of the film. While not positively recited, in the context of the claims taken as a whole and in light of Counsel's argument on page 7 full paragraph 1, the recited claims are assumed to require the final degree of breathability of a film to be greater than the partial degree of breathability of the film.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richard Crispino can be reached on (571) 272-1171. The fax phone

Art Unit: 1733

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao  
Primary Examiner  
Art Unit 1733

Scy  
01-24-06